

Claimant argues she has sustained her burden of proof that her accidental injury arose out of and in the course of employment and therefore the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant acknowledged that she sought emergency room medical treatment on March 22, 2004, for her right wrist after the handle bar of a bicycle she was loading into her car trunk struck her right wrist. X-rays were negative and claimant was diagnosed with a wrist sprain. Claimant was provided a wrist brace, medication and advised to follow up with her physician in a few days.¹

Claimant continued working and noted that the right wrist symptoms from the incident loading the bicycle improved and went away after a few days. But claimant noted that her job duties required her to use a hand-held computer to read bar codes on merchandise and repetitively pulling the trigger on that device caused numbness in her fingers and pain in her right arm. Claimant noted this pain, numbness and tingling was different than the pain she experienced after the incident with the bicycle. Because of the right arm pain the claimant began using her left hand operating the device and began to experience pain in her left wrist and arm.

On March 29, 2004, claimant saw Dr. Julie R. Burris in follow-up from the incident loading the bicycle. Claimant noted some right wrist pain but also indicated that she was having significant left wrist pain. Dr. Burris prescribed medication and recommended claimant wear wrist splints at work.

Claimant continued working and her wrist condition worsened. On April 13, 2004, Dr. Burris provided claimant with temporary restrictions against lifting greater than 10 pounds and for claimant to continue wearing wrist splints at work. Claimant was also referred for an orthopedic consultation. On April 20, 2004, claimant was examined by Dr. Thomas W. Kneidel who diagnosed bilateral wrist pain and noted claimant had not suffered any specific injury. The doctor prescribed medications and referred claimant for physical therapy.

Respondent referred claimant to Dr. Travis Hubin and claimant was diagnosed with repetitive motion injuries to both wrists. At her attorney's request, the claimant was examined by Dr. Michael H. Munhall who diagnosed bilateral wrist flexor tendonitis and bilateral de Quervain's tendonitis. Dr. Munhall attributed claimant's condition to her repetitive work activities with respondent.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that

¹ P.H. Trans., Resp. Ex. 2.

right depends.² “Burden of proof’ means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”³

Respondent argues the temporal relationship between the right wrist accident and claimant’s subsequent complaints of right and left wrist pain is too coincidental. When coupled with the fact the claimant did not advise some physicians of the non-occupational accident to the right wrist, the respondent concludes the facts support a finding claimant’s condition is related to the non-occupational incident and she failed to meet her burden of proof that she suffered a compensable injury.

The claimant testified the right wrist pain she suffered as a result of the incident loading the bicycle was different than the later onset of pain, tingling and numbness that she attributed to her repetitive work activities. And claimant noted the right wrist pain improved within a few days after the incident loading the bicycle but that the pain to the right wrist as well as the left wrist worsened as she continued working. Dr. Munhall was aware of the incident loading the bicycle and attributed claimant’s current condition to her repetitive work-related activities.

Based upon the evidence compiled to date, the Board concludes claimant has met her burden of proof that she suffered injuries arising out of and in the course of her employment and affirms the ALJ’s Order.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge John D. Clark dated July 29, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2004.

BOARD MEMBER

c: Phillip B. Slape, Attorney for Claimant
Kendall R. Cunningham, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² K.S.A. 44-501(a).

³ K.S.A. 2003 Supp. 44-508(g).